



TRINTEK ENERGY CONSULTING, INC.

April 22, 2005

Mr. Harry Stoller
Illinois Commerce Commission
Springfield, Illinois

Dear Mr. Stoller,

I would like to briefly comment on the implementation plan for an RPS standard which the Illinois Commerce Commission is now considering. My comments primarily relate to the draft requests for proposals and the model or form power purchase agreements which will be eventually be issued at some future date by the utilities in order to comply with any Commission directive or legislated law establishing an RPS.

From the independent project development perspective, it would be preferable if the Commission requests preliminary review and approval of the utilities' requests for proposals and the model form power purchase agreements prior to their being publicly issued to developers. If due to timing constraints this is either not practical nor possible, then I believe there should at least be a fast track process for dispute resolution or appeal to the Commission from the private sector developers to resolve any potential commercial issues which do not pass the standard of "reasonable and customary" contract provisions.

The reason I believe this is important is that I have recently participated in an RFP process on behalf of a client in a state where the commission has issued rate orders to the utilities mandating they establish a renewable program (not an RPS and no penalties). Unfortunately, there are no penalties associated with delay, or non-compliance which are significant enough to interest the utilities in actually working in the spirit of the commission's order with private developers. Hence the utilities have issued an RFP and a form or model PPA which in my opinion is so onerous and unreasonable and contains so many non-commercial terms and conditions that I am convinced that either there will be no bidders, or if there are bidders the prices bid will be extremely high, or that lenders will later inform the winning bidders that the terms they have agreed to will not be financeable. My client chose not to make a bid in this process.

If one looks around the U.S. and at other successful state programs, all of the ones in which projects succeed and iron goes in the ground are the ones where there are sufficient penalties to incent the utilities to offer fair and reasonable terms and conditions in their detailed request for proposal rules, and power purchase contracts. In other words, a contract is not just price but also terms and conditions. To believe that Illinois will somehow be different is to believe that entities do not act in their own self interest. Therefore, I believe penalties for non compliance and some form of Commission review

process for the utility RFP rules and the contents of the contracts offered, either upfront or as a default appeal process, are needed to insure that the details of the rules and contracts offered insure the lowest priced bids and that contracts are executed and projects financed. The devil is always in the details, and the contracts offered at the end of the day is where the rubber will meet the road. The Commission should either insure it understands the details of the future utility requests for proposals and the actual contracts to be offered or it at least needs to reserve for itself a process or means of extricating the program from potential failure due to unreasonable, or non-commercial terms being inserted into those contracts. As a suggestion, qualified project finance attorneys for law firms which understand and have experience in negotiating power purchase agreements nationwide should be consulted by the Commission in any review process of model or form contracts it decides to undertake.

I think it is obvious that if the RPS contains strong penalties for non-compliance, the need to review contract details would potentially be less, because then the utility has a real economic interest in offering fair and reasonable terms and conditions. To the extent there are no penalties, I believe the contract review process by the Commission becomes significantly more important.

If staff or the Commission are interested in seeing the RFP or actual contracts which have been offered in the state I mentioned and to understand some of the onerous terms and conditions or games that can be played, I'd be glad to provide additional details upon request. These documents I refer to are all public and non-confidential in nature.

Best Regards,

Tim N. Libson
Principal Consultant.